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5 AmTrust International Underwriters Limited

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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
10

11 **AMTRUST INTERNATIONAL**
12 **UNDERWRITERS LIMITED, an**
Irish corporation,

13 Plaintiff,

14 v.

15 **LAW OFFICES OF HOWARD S.**
FISHER, a California sole
16 proprietorship; **HOWARD S.**
FISHER, a California resident;
17 **RONALD V. SWANSON**, a
California resident; **DONNA KAY**
18 **SWANSON**, a California resident;
ROBERT K. PASCHALL, a
19 California resident; **JOAN L.**
PASCHALL, a California resident,

20 Defendants.
21

Case No.

**COMPLAINT OF AMTRUST
INTERNATIONAL
UNDERWRITERS LIMITED FOR
DECLARATORY RELIEF RE
CLAIM AGAINST LAW OFFICES
OF HOWARD S. FISHER AND
HOWARD S. FISHER BY
SWANSONS AND PASCHALLS
SUBJECT TO SINGLE LIMIT OF
LIABILITY UNDER LAWYERS
PROFESSIONAL LIABILITY
POLICY**

22
23 **I. INTRODUCTION**
24

25 1. AmTrust International Underwriters Limited (“AmTrust”) seeks a
26 judicial determination that pursuant to the related claim provision in the Lawyers
27 Professional Liability Policy issued by AmTrust to the Law Offices of Howard S.
28 Fisher Attorneys at Law (“Fisher Firm”) bearing policy No. PAL1044041 01 for

1 the policy period May 18, 2014 to May 18, 2015 (“Policy”), the claim (“Claim”)
2 against the Fisher Firm and Howard S. Fisher (“Fisher”) (collectively “Fisher Firm
3 Parties”) by Ronald V. Swanson (“Swanson”) and Donna Kay Swanson
4 (collectively “Swansons”) and Robert K. Paschall (“Paschall”) and Joan L. Paschall
5 (collectively “Paschalls”) (the Swansons and Paschalls collectively “Claimants”)
6 being defended by AmTrust pursuant to the Policy constitutes a single claim subject
7 to the single per claim Limit of Liability of \$500,000 under the Policy with such
8 limit reduced by covered **claim expenses** and a single \$20,000 deductible, and not
9 two (2) separate per claim limits of \$500,000 subject to the \$1,000,000 aggregate
10 Limit of Liability under the Policy nor two (2) separate \$20,000 deductibles.

11 2. The Fisher Firm Parties represented Claimants in connection with
12 certain Internal Revenue Service (“IRS”) proceedings in which the IRS sought to
13 recover from Claimants certain amounts for excise taxes, penalties and interest in
14 connection with an alleged abusive tax shelter scheme allegedly recommended to
15 Claimants by an accountant with the accounting firm Grant Thornton (“GT”) in
16 which Claimants converted funds held in traditional IRA accounts to Roth IRA
17 accounts (“Roth Restructure”) through a series of transactions involving certain
18 wholly owned corporations.

19 3. Claimants have asserted that in connection with the Fisher Firm’s
20 representation of Claimants relating to the Roth Restructure, the Fisher Firm Parties
21 failed to enter into certain tolling agreements issued by counsel for GT in 2008 such
22 that certain purported potential claims (“Potential Claims”) of Claimants against
23 GT and certain other parties (“GT Parties”) involved in the Roth Restructure
24 became time barred.

25 4. Pursuant to the provisions contained in Section III.D. (“Related Claim
26 Provision”) of the Lawyers Professional Liability Policy coverage form (Form
27 LPL-POL-01 Ed. 0712) (“LPL Form”) of the Policy, “the Limits of Liability shown
28 in the Declarations are subject to the provisions of this Policy and are the amount

1 the **Company** will pay regardless of the number of **Insureds, claims** or persons or
2 entities making **claims**” and that all “**related claims**, whenever made, shall be
3 considered a single **claim** first made and reported to the **Company** during the
4 **policy period** in which the earliest of the **related claims** was first made and
5 reported to the **Company**.” The term “**related claims**” is defined in Section II.M.
6 of the LPL Form to mean “all **claims** arising out of a single act or omission or
7 arising out of **related acts or omissions** in the rendering of **legal services**” with the
8 term “**related acts or omissions**” defined in Section II.L. of the LPL Form to mean
9 “all acts or omissions in the rendering of **legal services** that are temporally,
10 logically or causally connected by any common fact, circumstance, situation,
11 transaction, event, advice or decision.”

12 5. AmTrust seeks a declaration that pursuant to the Related Claim
13 Provision, the Claim asserted by Claimants against the Fisher Firm Parties for
14 allegedly failing to have entered into the 2008 GT tolling agreements and/or
15 otherwise allegedly failing to prevent the Potential Claims by Claimants against the
16 GT Parties regarding the Roth Restructure from allegedly becoming time barred
17 constitutes a single claim subject to a single \$500,000 Limit of Liability under the
18 Policy and a single deductible of \$20,000 and not two (2) separate Claims subject
19 to two (2) separate \$500,000 Limits of Liability and two (2) separate deductibles of
20 \$20,000.

21 6. AmTrust also seeks a declaration that upon the exhaustion of the single
22 \$500,000 per claim Limit of Liability applicable to the Claim from payments by
23 AmTrust for covered **claim expenses** and/or covered **damages** that no further
24 coverage exists under the Policy for the Claim such that AmTrust has no duty to
25 defend the Claim and/or indemnify any amounts relating to the Claim after that
26 \$500,000 Limit of Liability has been exhausted.

II. THE PARTIES

7. At all times herein mentioned, AmTrust was and is, a corporation organized and existing under the laws of the Republic of Ireland, with its principal place of business in the United States located in Cleveland, Ohio and is a citizen of Ireland and the State of Ohio.

8. AmTrust is informed and believes, and thereon alleges, that at all times herein relevant, Fisher was and is a resident domiciled in the State of California and a citizen of the State of California.

9. AmTrust is informed and believes, and thereon alleges, that at all times herein relevant, the Fisher Firm is a sole proprietorship of Fisher, a citizen of the State of California such that the Fisher Firm is also a citizen of the State of California.

10. AmTrust is informed and believes, and thereon alleges, that at all times herein relevant, Ronald V. Swanson was and is a resident domiciled in the State of California and a citizen of the State of California.

11. AmTrust is informed and believes, and thereon alleges, that at all times herein relevant, Donna Kay Swanson was and is a resident domiciled in the State of California and a citizen of the State of California.

12. AmTrust is informed and believes, and thereon alleges, that at all times herein relevant, Robert K. Paschall was and is a resident domiciled in the State of California and a citizen of the State of California.

13. AmTrust is informed and believes, and thereon alleges, that at all times herein relevant, Joan L. Paschall was and is a resident domiciled in the State of California and a citizen of the State of California.

14. The Swansons and the Paschalls, who do not qualify as Insureds under the Policy, have been named as defendants in this action so as to bind them to any judicial determination herein regarding AmTrust's requests for declaratory relief with respect to coverage issues regarding the Limit of Liability of the Policy

1 applicable to the Claim. AmTrust is amenable to dismissing the Swansons and
2 Paschalls from this action without prejudice pursuant to a stipulation and order that
3 they agree to be bound by the judicial determinations made herein.

4 5 **III. JURISDICTION AND VENUE**

6
7 15. This Court has jurisdiction over the subject matter of this action
8 pursuant to 28 U.S.C. §1332(a)(1) in that the matter in controversy exceeds the sum
9 of \$75,000, exclusive of interest and costs, and is between citizens of different
10 States, in that AmTrust is a corporation domiciled in Ireland with its principal place
11 of business in the United States in Cleveland, Ohio, and thus a citizen of Ireland
12 and the State of Ohio, whereas all defendants are citizens of the State of California.
13 The amount in controversy is in excess of the sum of \$75,000, exclusive of interest
14 and costs in that counsel for Claimants has asserted that the Claim involves two (2)
15 separate claims against the Fisher Firm Parties each subject to a separate per claim
16 Limit of Liability of \$500,000 in connection with the \$1,000,000 aggregate Limit
17 of Liability whereas AmTrust contends that pursuant to the Related Claim
18 Provision, the Claim involves a single Claim subject to a single \$500,000 per claim
19 Limit of Liability.

20 16. Pursuant to 28 U.S.C. §1391(a), venue is appropriate in the Central
21 District of California because jurisdiction is founded upon diversity of citizenship,
22 with the defendants named herein subject to personal jurisdiction in this district at
23 the time this action was commenced, and AmTrust is informed and believes and
24 thereon alleges that the acts giving rise to the claims for relief asserted herein,
25 including the delivery of the Policy to the Fisher Firm, the Fisher Firm's retention
26 by Claimants and the services rendered by the Fisher Firm on behalf of the
27 Claimants, including but not limited to, the litigation of the tax cases involving the
28 IRS and Claimants arose in the Central District of California.

1 **IV. FACTUAL BACKGROUND**

2
3 **A. THE ROTH RESTRUCTURE**

4
5 17. AmTrust is informed and believes and thereon alleges that in or about
6 2000, Paschall first met with A. Blair Stover, Jr. ("Stover") of GT about the Roth
7 Restructure.

8 18. AmTrust is informed and believes and thereon alleges that in or about
9 March 2000, Swanson first met with Stover of GT about the Roth Restructure.

10 19. AmTrust is informed and believes and thereon alleges that on or about
11 March 17, 2000, Paschall executed an engagement letter with GT for professional
12 tax and financial consulting services with respect to the Roth Restructure.

13 20. AmTrust is informed and believes and thereon alleges that on or about
14 April 11, 2000, Swanson executed an engagement letter with GT for professional
15 tax and financial consulting services with respect to the Roth Restructure.

16 21. AmTrust is informed and believes and thereon alleges that the
17 engagement letters signed by Paschall and Swanson ("Engagement Letters") each
18 contained a clause that provided that GT would represent and defend the Paschalls
19 and Swansons and any related entity at no additional cost in case of an audit by the
20 IRS relating to the Roth Restructure.

21 22. AmTrust is informed and believes and thereon alleges that the
22 Engagement Letters signed by Paschall and Swanson each contained a clause that
23 provided that GT would reimburse and indemnify the Paschalls and Swansons for
24 any civil negligence or fraud penalty assessed against them by any federal or state
25 authorities relating to the Roth Restructure.

26 23. AmTrust is informed and believes and thereon alleges that Paschall
27 and Swanson each paid a \$120,000 fee for the Roth Restructure.
28

1 24. AmTrust is informed and believes and thereon alleges that the
2 Engagements Letters provided that the \$120,000 fee paid by Paschall and Swanson
3 would be equally split between GT and the law firm Nevada Corp. Association
4 (“NCA”).

5 25. AmTrust is informed and believes and thereon alleges that on March
6 20, 2000, NCA formed certain corporations for the Paschalls and the Swansons to
7 implement the Roth Restructure.

8 26. AmTrust is informed and believes and thereon alleges that on March
9 20, 2000, NCA formed Telesis Acquisition and Investment Co., Inc. (“Telesis”),
10 and West Star Global Holdings, Inc. (“West Star”) with the same principal place of
11 business and that Paschall served as president, secretary, and treasurer of both of
12 those corporations in connection with certain transactions relating to the Roth
13 Restructure.

14 27. AmTrust is informed and believes and thereon alleges that on March
15 20, 2000, NCA formed Sierra West Global Holdings, Inc. (“Sierra West”) that was
16 joined by NCA with Northstar Acquisition and Investment Co., Inc. (“Northstar”),
17 that had been formed by NCA sometime in the first 6 months of 2000 with Sierra
18 West and Northstar sharing the same registered agent and registered office and that
19 Swanson served as president, secretary, and treasurer of both of those corporations
20 during 2000 and 2001 in connection with certain transactions relating to the Roth
21 Restructure.

22 28. AmTrust is informed and believes and thereon alleges that on or about
23 March 2000 and May 1, 2000, Paschall and Swanson respectively, opened a Self-
24 Directed Roth IRA at George K. Baum Trust Co. (“Baum Roth IRA”) and each
25 deposited \$2,000 into those accounts from prior investment accounts as part of the
26 Roth Restructure.

27 29. AmTrust is informed and believes and thereon alleges that on or about
28 March 20, 2000 and April 25, 2000, Paschall and Swanson respectively, opened a

1 Roth IRA account with First Union Securities, Inc., ("First Union Roth IRA") in
2 connection with the Roth Restructure.

3 30. AmTrust is informed and believes and thereon alleges that on or about
4 March 22, 2000 and April 28, 2000, Paschall and Swanson respectively, opened a
5 Self-Directed Traditional IRA at the First Trust Company of Onaga ("FNBO IRA")
6 in connection with the Roth Restructure.

7 31. AmTrust is informed and believes and thereon alleges that on or about
8 March 30, 2000 and May 5, 2000, Paschall and Swanson, respectively, funded their
9 FNBO IRA with a rollover from pre-existing retirement accounts with Paschall
10 rolling over \$1,207,822.50 from a thrift and savings account with his former
11 employer Hughes Global Services ("Hughes Account") and Swanson rolling over
12 \$1,391,941.64 from a traditional IRA account with Resources Trust ("Resources
13 Trust IRA") in connection with the Roth Restructure.

14 32. AmTrust is informed and believes and thereon alleges that on or about
15 March 27, 2000 and May 2, 2000, Paschall and Swanson, respectively caused their
16 Baum Roth IRA to purchase for \$2,000 all of the shares of Telesis and all of the
17 shares of Northstar in connection with the Roth Restructure.

18 33. AmTrust is informed and believes and thereon alleges that on or about
19 March 30, 2000 and May 5, 2000, Paschall and Swanson, respectively caused their
20 FNBO IRA to be funded with a rollover of \$1,391,941.64 from the Resources Trust
21 IRA and \$1,207,802.55 from the Hughes Account in connection with the Roth
22 Restructure.

23 34. AmTrust is informed and believes and thereon alleges that on or about
24 that on or about April 26, 2000 and May 19, 2000, Paschall and Swanson,
25 respectively caused their FNBO IRA to acquire all of the shares of West Star and
26 Sierra West for \$1,392,801.96 and \$1,207,802.55 in connection with the Roth
27 Restructure.

28

1 35. AmTrust is informed and believes and thereon alleges that on or about
2 April 26, 2000 and May 22, 2000, Paschall and Swanson, respectively caused West
3 Star to transfer \$1,272,801.96 to Telesis and Sierra West to transfer \$1,087,802.55
4 to Northstar in connection with the Roth Restructure.

5 36. AmTrust is informed and believes and thereon alleges that on or about
6 April 28, 2000 and May 22, 2000, Paschall and Swanson, respectively caused
7 Telesis to transfer \$1,272,801.96 to Paschall's Baum Roth IRA and Northstar to
8 transfer \$1,238.000 to Swanson's Baum Roth IRA in connection with the Roth
9 Restructure.

10 37. AmTrust is informed and believes and thereon alleges that on or about
11 April 28, 2000 and by January 8, 2001, Paschall and Swanson, respectively caused
12 \$1,272,801.96 and \$1,610,000 to be transferred from their Baum Roth IRA to the
13 First Union Roth IRA in connection with the Roth Restructure.

14 38. AmTrust is informed and believes and thereon alleges that Paschall
15 and Swanson, respectively caused amounts in the First Union Roth IRA to be
16 invested in various publicly traded securities and mutual funds and/or annuities.

17 39. AmTrust is informed and believes and thereon alleges that in or about
18 December 2001, Telesis was merged into West Star and Sierra West was merged
19 into Northstar with each of those surviving entities later dissolved in connection
20 with the Roth Restructure.

21
22 **B. THE RECOVERY OF AMOUNTS FROM CLAIMANTS BY**
23 **THE IRS BECAUSE OF THEIR EXCESS CONTRIBUTIONS**
24 **TO ROTH IRAS BECAUSE OF THE ROTH RESTRUCTURE**
25

26 40. AmTrust is informed and believes and thereon alleges that on February
27 1, 2008 and July 23, 2008, the IRS issued notices of deficiency to the Paschalls to
28 collect amounts for claimed deficiencies, additions to tax, and penalties for the tax

1 years 2002 through 2006 in connection with the Roth Restructure on the grounds
2 that the amounts transferred to the Roth IRA constituted an excess contribution to
3 avoid paying federal income tax.

4 41. AmTrust is informed and believes and thereon alleges that the IRS
5 claimed that the entire \$1,272,801.96 contribution from Telesis to the Baum Roth
6 IRA on April 28, 2000 constituted an excess contribution with the IRS asserting
7 that the Paschalls owed the IRS \$531,310.15 comprised of \$425,513.15 for the
8 deficiency, \$103,477.00 for the additions to tax and \$2,320.00 for penalties.

9 42. AmTrust is informed and believes and thereon alleges that on October
10 6, 2008, the IRS issued three (3) notices of deficiency to the Swansons for the tax
11 years 2001 through 2006 and 2007 and sought certain Section 6662(a) accuracy-
12 related penalties in connection with the Roth Restructure on the grounds that the
13 amounts transferred to the Roth IRA allegedly constituted an excess contribution to
14 avoid paying federal income tax.

15 43. AmTrust is informed and believes and thereon alleges that the IRS
16 claimed that the Swansons had made an excess contribution of \$1.61 million into a
17 Roth IRA and that the IRA claimed that the Swansons owed the IRS deficiencies,
18 additions to tax and penalties of \$1,429,259.80.

19
20 **C. THE FISHER FIRM'S REPRESENTATION OF THE**
21 **CLAIMANTS**
22

23 44. AmTrust is informed and believes and thereon alleges that in 2008,
24 after the Claimants had received notices of deficiency from the IRS regarding the
25 Roth Restructure, that Claimants retained the Fisher Firm to represent them with
26 respect to amounts sought to be collected from Claimants by the IRS and to pursue
27 the Potential Claims against the GT Parties in connection with Claimants' alleged
28 losses from the Roth Restructure.

1 45. AmTrust is informed and believes and thereon alleges that in or about
2 April 2008 and September 2008, the Swansons and the Paschalls, respectively,
3 retained the Fisher Firm to defend the IRS claims and to pursue the Potential
4 Claims against the GT Parties.

5 46. AmTrust is informed and believes and thereon alleges that on or about
6 October 13, 2008, Fisher sent a letter to GT notifying GT of the Potential Claims in
7 connection with the Roth Restructure.

8 47. AmTrust is informed and believes and thereon alleges that on or about
9 October 24, 2008, counsel for GT sent to Fisher proposed tolling agreements
10 (“2008 Tolling Agreements”) to be signed by Claimants to toll for a period of one
11 year certain statute of limitations with respect to the Proposed Claims.

12 48. AmTrust is informed and believes and thereon alleges that the Fisher
13 Firm represented the Claimants in the following actions in the United States Tax
14 Court in Los Angeles: *Swanson v. C.I.R.*, 102 T.C.M. (CCH) 6 (T.C. 2011)
15 (“Swanson Tax Case”) and *Paschall v. C.I.R.*, 137 T.C. 8 (2011) (“Paschall Tax
16 Case”) in connection with certain petitions filed in the United States Tax Court in
17 Los Angeles by Fisher on behalf of Claimants with respect to certain amounts that
18 the IRS sought to collect from Claimants in connection with the Roth Restructure.

19 49. AmTrust is informed and believes and thereon alleges that on July 5,
20 2011, the Tax Court ruled in favor of the IRS in the Swanson Tax Case and held
21 that the Swansons were liable for certain Internal Revenue Code (“I.R.C.”) Section
22 6662(a) accuracy-related penalties for their 2001 through 2006 tax years in
23 connection with having made an excess contribution of \$1.61 million into a Roth
24 IRA.

25 50. AmTrust is informed and believes and thereon alleges that on July 5,
26 2011, the Tax Court ruled in favor of the IRS in the Paschall Tax Case and held that
27 the Paschalls were liable for certain excise tax deficiencies and additions to tax
28

1 under Sec. 6651(a)(1), I.R.C., for their 2002 through 2006 tax years in connection
2 with having made an excess contribution of \$1,272,801.96 into a Roth IRA.

3
4 **D. THE CLAIMS AGAINST THE FISHER FIRM PARTIES BY**
5 **THE CLAIMANTS**
6

7 51. AmTrust is informed and believes and thereon alleges that following
8 the rulings in the Swanson and Paschall Tax Cases that Fisher and attorney David
9 Lee Rice ("Rice") sought to pursue the Potential Claims against the GT Parties.

10 52. AmTrust is informed and believes and thereon alleges that according
11 to Rice, demand letters were sent to GT in or about July 2013 and March 2014 in
12 connection with the Potential Claims and that in or about June 2014 GT allegedly
13 advised Rice that certain of the Potential Claims were time barred under the
14 applicable statute of limitations.

15 53. On July 15, 2014, Fisher notified AmTrust that he was reporting a
16 claim pursuant to the Policy regarding the assertion that certain of the Potential
17 Claims were allegedly time barred.

18 54. On February 25, 2015, AmTrust was notified by Fisher that Rice had
19 informed Fisher that Claimants were pursuing a legal malpractice claim against the
20 Fisher Firm Parties in connection with their alleged failure to enter into the 2008
21 Tolling Agreements or to allegedly otherwise protect against the statute of
22 limitations from allegedly expiring as to the Potential Claims of Claimants against
23 GT relating to the Roth Restructure.

24 55. AmTrust in response to that February 25, 2015 notice appointed
25 defense counsel to defend the Claim asserted by Claimants against the Fisher Firm
26 Parties.

27 56. AmTrust is informed and believes that counsel for Claimants has
28 asserted that the Claim should be subject to two (2) per claims Limits of Liability of

1 \$500,000 under the Policy.

2 57. On May 26, 2015, AmTrust notified the Fisher Firm Parties that
3 pursuant to the Related Claim Provision, the Claim constitutes a single claim
4 subject to the single per claim Limit of Liability of \$500,000 under the Policy with
5 such limit reduced by covered **claim expenses** and subject to a single \$20,000
6 deductible.

7
8 **E. THE POLICY**

9
10 58. On May 19, 2014, the Policy was issued to the Fisher Firm and Item 4.
11 of the Lawyers Professional Liability Policy Declarations to the Policy
12 (“Declarations”) entitled “Limits of Liability (Includes **Claim Expenses**)” referred
13 to a Per Claim Limit of Liability of \$500,000 and an Aggregate Limit of Liability
14 of \$1,000,000.”

15 59. A true and correct copy of the Policy, without the application, is
16 attached hereto as Exhibit “A” and incorporated herein by this reference.

17 60. Item 6. of the Declarations referred to a deductible under the Policy of
18 “\$20,000 per claim.”

19 61. The LPL Form of the Policy contains the following insuring
20 agreements:

21 **A. Coverage**

22 The **Company** will pay on behalf of the **Insured** sums in excess of the deductible that the **Insured**
23 shall become legally obligated to pay as **damages** because of a **claim** that is first made against the
24 **Insured** and reported to the **Company** during the **policy period** or any Extended Reporting Period
arising out of an act or omission in the performance of **legal services** by the **Insured** or by any person
for whom the **Insured** is legally liable, provided that:

- 25 1. prior to the inception date of the **policy period**, the **Insured** did not give notice under any other
26 insurance policy of such **claim** or **related claim** or such act or omission or **related act or**
omission; and
- 27 2. prior to the inception date of the first policy, or if this policy has been continuously renewed, prior
28 to the inception date of the first policy issued by the Company, no **Insured** knew of could
reasonably have foreseen that any such act or omission, or **related act or omission**, might be
expected to be the basis of a **claim**.

1 The **Company** shall also pay **claim expenses** in connection with such **claim**.

2 B. Defense

3 The **Company** shall have the right and duty to defend, subject to and as part of the Limits of Liability,
4 any **claim** against the **Insured** seeking **damages** which are payable under the terms of this Policy
5 even if any of the allegations of the **claim** are groundless, false or fraudulent. The **Company** shall
6 have the right to appoint counsel and to make such investigation and defense of a **claim** as it deems
7 appropriate. If a **claim** shall be subject to arbitration or mediation, the **Company** shall be entitled to
8 exercise all of the **Insured's** rights in the choice of arbiters or mediators and in the conduct of an
9 arbitration or mediation proceeding.

10 C. Settlement

11 The **Company** shall have the right to negotiate a settlement or compromise of a **claim** as it deems
12 appropriate but shall not commit to settlement of a **claim** without the written consent of the **Named**
13 **Insured**. If the **Named Insured** refuses to consent to a settlement or compromise recommended by the
14 **Company** and acceptable to the claimant, then the **Company's** Limits of Liability under this Policy shall
15 be reduced to the amount for which the **claim** could have been compromised or settled, plus all **claim**
16 **expenses** incurred up to the time the **Company** makes its recommendation, which amount shall not
17 exceed the remainder of the Limits of Liability specified in Section III. A.

18 D. Exhaustion of limits

19 The **Company** is not obligated to investigate, defend, pay or settle, or continue to investigate, defend,
20 pay, or settle a **claim** after the applicable Limits of Liability have been exhausted by payment of
21 **damages** and/or **claim expenses**, or any combination thereof, or after the **Company** has deposited the
22 remaining Limits of Liability into a court of competent jurisdiction in satisfaction of a judgment. In such
23 case, the **Company** shall have the right to withdraw from further investigation, defense, payment or
24 settlement of such **claim** by tendering control of said investigation, defense or settlement of the **claim**
25 to the **Insured**. The **Company** will initiate and cooperate in the transfer of control to the **Named Insured**
26 of any **claims** which were reported to the **Company** prior to the exhaustion of such limit and the **Named**
27 **Insured** must cooperate in the transfer of control of such **claims**. The **Company** agrees to take the
28 necessary steps, as it deems appropriate, to avoid a default in such **claims** until the transfer has been
completed, provided the **Named Insured** is cooperating in such transfer. The **Named Insured** must
reimburse the **Company** for expenses it incurs in taking those steps it deems appropriate to avoid a
default during the transfer of control.

62. The Limits of Liability and Deductible portion of the LPL Form of the
Policy contains in part the following provisions including regarding "Multiple
Insureds, Claims and Claimants:"

A. Limits of Liability - Each Claim

Subject to paragraph B. below, the Limits of Liability of the **Company** for each **claim** shall
not exceed the amount stated in the Declarations for each **claim**.

B. Limits of Liability - In the Aggregate

The Limits of Liability of the **Company** for all **claims** shall not exceed the amount stated in
the Declarations as the aggregate.

C. Deductible

The deductible amount stated in the Declarations is the total amount of the **Insured's** liability for each and every **claim** and applies to the payment of **damages** and **claims expenses**. The deductible shall be paid by the **Named Insured** or, upon the **Named Insured's** failure to pay, jointly and severally by all **Insureds**. The Limits of Liability set forth in the Declarations are in addition to and in excess of the deductible.

D. Multiple Insureds, Claims and Claimants

The Limits of Liability shown in the Declarations are subject to the provisions of this Policy and are the amount the **Company** will pay regardless of the number of **Insureds**, **claims** or persons or entities making **claims**. If **related claims** are subsequently made against the **Insured** and reported to the **Company** during the **policy period** or any subsequent renewal or Extended Reporting Period, all such **related claims**, whenever made, shall be considered a single **claim** first made and reported to the **Company** during the **policy period** in which the earliest of the **related claims** was first made and reported to the **Company**. The Limits of Liability for any such **related claims** shall be part of, and not in addition to, any remaining Limits of Liability as stated in the Declarations of the policy.

("Related Claim Provision").

63. The following are definitions of certain terms that appear in the Policy:

Wherever used in this Policy:

A. "**Claim**" means a written or verbal demand received by the **Insured** for money or services arising out of an act or omission, including **personal injury**, in rendering or failing to render **legal services**. A demand shall include the service of suit or the institution of an arbitration proceeding against the **Insured**.

* * *

D. "**Damages**" means judgments, awards and settlement if negotiated with the assistance and approval of the **Company**. **Damages** do not include:

1. Legal fees, costs and expenses paid to or incurred or charged by the **Insured**, whether or not claimed as restitution of specific funds, forfeiture, financial loss, set-off or otherwise, and injuries that are a consequence of any of the foregoing;
2. Return or replenishment of client or other funds that the **Insured** commingled, converted, misused, misappropriated or was not otherwise entitled to, regardless of whether such funds are received in the form of a loan, retainer, contingency or otherwise;
3. civil or criminal fines, sanctions, penalties or forfeitures, whether pursuant to federal, state or local law, statute, regulation or court rule and injuries that are a consequence of any of the foregoing;
4. punitive or exemplary amounts and the multiplied portion of multiplied awards;
5. injunctive or declaratory relief;
6. amounts for which the **Insured** is not financially liable or that are without legal recourse to the **Insured**.

* * *

G. "**Legal services**" mean:

1. those services performed by an **Insured** for others as a lawyer, arbiter, mediator,

1 title agent, a notary public, or member of a bar association, ethics, peer review or
 2 similar professional board or committee but only if such services are performed for
 3 a fee that inures to the benefit of the **Named Insured** except that no fee need inure
 4 to the **Named Insured** where eleemosynary (pro bono) services are performed and
 approved by the **Named Insured**. Any title agency or company, on whose behalf
 the **Insured** acts as title agent or designated issuing attorney, is not an **Insured**
 under this Policy;

- 5 2. those services performed by an **Insured** as an administrator, conservator, receiver,
 6 executor, guardian, trustee or in a fiduciary capacity excluding acts of a "fiduciary"
 7 as defined under the Employee Retirement Income Security Act of 1974 and its
 amendments or any regulation or order issued pursuant thereto or any other similar
 state or local law. Services performed by an **Insured** as an administrator, executor
 or trustee must be services ordinarily rendered by a lawyer and with the approval of
 the **Named Insured** at the time of retention.

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- 10 L. **"Related act or omission"** means all acts or omissions in the rendering of **legal services** that
 11 are temporally, logically or causally connected by any common fact, circumstance, situation,
 transaction, event, advice or decision.
- 12 M. **"Related claim"** means all **claims** arising out of a single act or omission or arising out of **related**
 13 **acts or omissions** in the rendering of **legal services**.

14 **FIRST CLAIM FOR RELIEF**

15 (Declaratory Relief - Single Limit of Liability)

16 64. AmTrust refers to the foregoing paragraphs 1 through 63 and
 17 incorporates the same herein by this reference.

18 65. An actual controversy has arisen and now exists between AmTrust and
 19 the Fisher Firm Parties in that AmTrust contends, and is informed and believes, that
 20 the Fisher Firm Parties deny, that the Claim against the Fisher Firm Parties by
 21 Claimants being defended by AmTrust pursuant to the Policy constitutes a single
 22 claim under the Related Claim Provision of the Policy so as to be subject to the
 23 single per claim limit of liability of \$500,000 under the Policy and a single \$20,000
 24 deductible and not two (2) separate per claim limits of \$500,000 subject to the
 25 \$1,000,000 aggregate limit of liability under the Policy nor two (2) separate
 26 \$20,000 deductibles.

27 66. AmTrust seeks, and is entitled to obtain, a judicial declaration that the
 28 Claim by Claimants against the Fisher Firm Parties constitutes a single claim

1 pursuant to the Related Claim Provision of the Policy so as to be subject to the
 2 single per claim limit of liability of \$500,000 that is reduced by covered **claim**
 3 **expenses** under the Policy and a single \$20,000 deductible and not two (2) separate
 4 claims subject to the \$1,000,000 aggregate limit of liability under the Policy nor
 5 two (2) separate \$20,000 deductibles.

6 7 SECOND CLAIM FOR RELIEF

8 (Declaratory Relief – No Duty to Defend or Indemnify Upon Exhaustion of Single
 9 \$500,000 Limit of Liability Applicable to the Claim)

10 67. AmTrust refers to the foregoing paragraphs 1 through 66 and
 11 incorporates the same herein by this reference.

12 68. An actual controversy has arisen and now exists between AmTrust and
 13 the Fisher Firm Parties in that AmTrust contends, and is informed and believes, that
 14 the Fisher Firm Parties deny, that upon exhaustion of the single \$500,000 per claim
 15 Limit of Liability under the Policy applicable to the Claim from payments for
 16 covered **claim expenses** and/or covered **damages**, that no further coverage exists
 17 under the Policy relating to the Claim such that AmTrust has no duty to defend the
 18 Claim and/or indemnify any amount relating to the Claim after that \$500,000 Limit
 19 of Liability has been exhausted.

20 69. Section I.D. of the LPL Form of the Policy provides, in part, that
 21 AmTrust “is not obligated to investigate, defend, pay or settle, or continue to
 22 investigate, defend, pay, or settle a claim after the applicable Limits of Liability
 23 have been exhausted by payment of **damages** and/or **claim expenses**, or any
 24 combination thereof...” such that once the single \$500,000 per claim Limit of
 25 Liability has been exhausted with respect to the payment of covered **damages**
 26 and/or covered **claim expenses** in connection with the Claim no coverage exists
 27 under the Policy for any amounts incurred relating to the Claim.

28 70. AmTrust seeks, and is entitled to obtain, a judicial declaration that

1 upon the exhaustion of the single \$500,000 per claim Limit of Liability applicable
2 to the Claim from payments by AmTrust for covered **claim expenses** and/or
3 covered **damages** that no further coverage exists under the Policy for the Claim
4 such that AmTrust has no duty to defend the Claim and/or indemnify any amounts
5 relating to the Claim after that \$500,000 Limit of Liability has been exhausted.

6
7 WHEREFORE, AmTrust prays for judgment as follows:

- 8
- 9 1. For a declaration that the Claim by Claimants against the Fisher Firm
10 Parties constitutes a single claim pursuant to the Related Claim
11 Provision of the Policy and subject to the single per claim limit of
12 liability of \$500,000 that is reduced by covered **claim expenses** under
13 the Policy and a single \$20,000 deductible;
 - 14
15 2. For a declaration that that upon the exhaustion of the single \$500,000
16 per claim Limit of Liability applicable to the Claim from payments by
17 AmTrust for covered **claim expenses** and/or covered **damages** that no
18 further coverage exists under the Policy for the Claim such that
19 AmTrust has no duty to defend the Claim and/or indemnify any
20 amounts relating to the Claim after that \$500,000 Limit of Liability
21 has been exhausted.
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1 3. For such other and further relief as the Court deems appropriate.

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3 DATED: August 19, 2015

CHARLSTON, REVICH & WOLLITZ LLP
ROBERT D. HOFFMAN

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6 By: /s/Robert D. Hoffman
7 Robert D. Hoffman
8 Attorneys for Plaintiff
9 AmTrust International Underwriters Limited
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